IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1289 OF 2006

Madhav Keahsv Kulkarni ... Petitioner

Versus

The Saraswat Co-operative Bank Ltd.
and Ors. ... Respondents

Mr. O.J. Menezes with Mr.R .S. Tripathi and Mr. P.P. Prabhu for Petitioner.

Mr.Y.R. Naik with Mr. Prashant Naik for R. No. 1.

Dr.Virednra Tulzapurkar, Sr. Counsel i/by P.P. Naik for R. Nos. 2 and 3.

Mr. Y.S. Bhate for R. No. 4.

CORAM: F.I. REBELLO &
MRS.V.K.TAHILRAMANI,JJ.
DATE : 7TH JUNE, 2006

P.C.:

1. The Petitioner has approached this court for various reliefs including to direct Respondent Nos. 14 to 16 to supersede the present Board of Directors of the Respondent No. 1 bank under Section 123 of the Act, to disqualify the existing Board of Directors as being ineligible to contest the elections under Section 43(2) and Rule 20(2) and thereafter to hold the fresh selection to elect the new Board of Directors for the Respondent No. 1 Bank. There are various other reliefs which need not be adverted to in view the order to be passed.

2. We may briefly note that Respondent No. 1 is a a Multi state Cooperative Society within the meaning of Section 3(Q) of the Multi State Cooperative Societies Act, 2002 (which hereinafter shall be

referred to as "Act"). A learned Division Bench of this court in Writ Petition No. 3371 of 2003 decided on August, 11, 2003, has answered the question before it as to the term of the elected members of the Board of Directors who were elected under the provisions of the Multi State Cooperative Societies Act, 1984. After considering the law, the learned Division Bench came to the conclusion that the term of the elected Board of Directors was only for the period of three years and not the term of five years as envisaged under the Act. The S.L.P. preferred before the Apex Court was dismissed.

3. On 17.9.2003, on behalf of the Central Registrar of Cooperative Societies, a general communication was issued intimating the judgment of this court and pointing out that the Board of Directors of some societies were continued despite expiry of their three years term. Such societies were therefore, advised to immediately start the process of elections of the new Board of Directors failing which action was threatened. A notice was issued on 17.3.2004 to the Petitioner Bank calling upon them to start the process of conducting elections for constituting a new Board of Directors, failing which action shall be taken as set out therein.

. Against that notice, it appears that the Petitioners herein choose to move the Delhi High Court by way of Writ Petition (L) No. 6355 of 2004.

C.M. No. 3136 of 2006 was taken out therein, wherein certain directions were issued to direct the Central Registrar to appoint Returning Officer to conduct the elections.

. The Petitioners filed petition before this court being Writ Petition No. 856 of 2006 which was disposed of on 17.4.2006. Considering the order passed by the Delhi High Court, the Petitioners were asked to move the Delhi High Court. The Central Registrar was directed not to proceed with the election process for the period of three weeks if the election process had not already commenced. That interim relief was continued from time to time. The Petitioners, it appears had filed an application before the Delhi High Court which came to be disposed of by observing as under :

> "In terms of the order dated 17.3.2006, the election will continue. However, we make it clear that it will be open for the respondent to raise whatever abjection after election is over. To that extent the writ petition has not been disposed of on merit."

. The Petitioners have not challenged that order. Instead, they have moved this court by way of separate writ petition.

4. The learned counsel had drawn our attention to

Section 123 of the Act. It is clear from explanation to Section 123, that Sections 122 and Section 123 would not apply in the instant case to the respondent Bank. Our attention was also invited to Section 84. Under Section 84(2)(c) there is power to raise dispute in connection with the election of any officer of a multi State Cooperative Society. We have also taken note of Rule 19 of the Rules wherein in respect of multi State Urban Cooperative Banks, it is the Central Registrar who has to appoint a Returning Officer. In fact the Delhi High Court by its order had directed the Central Registrar to appoint Returning Officer to conduct the elections. The other relief which the Petitioner seeks is to disqualify the members of the present Board of Directors. That cannot be gone into in the present petition, as it will always be open to the Petitioner or any voters to raise the objections before the Returning Officer.

. The learned counsel for the Petitioners had drawn our attention to some judgments. For the view to be taken, it is not necessary to advert to the said judgements.

5. The Delhi High Court has issued directions. That indicate that the Petition was disposed off on merits. The Petitioner herein have not challenged the decision. In our opinion, it will not be

possible for this court in these circumstances to entertain this petition.

8. For the aforesaid reasons, in our opinion, this will not be a fit case for this court to exercise its extra ordinary jurisdiction.

. Petition dismissed. There shall be no order as to costs.

(F.I.REBELLO, J.)

(MRS.V.K.TAHILRAMANI,J.)